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Before The  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C.

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FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C.

In re:

Review of the Commission's Regulations  
Governing Television Broadcasting

MM Docket No. 91-221

Television Satellite Stations  
Review of Policy and Rules

MM Docket No. 87-7

To: The Commission

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REPLY COMMENTS OF BET HOLDINGS INC.

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## **Executive Summary**

The Federal Communications Commission ("FCC" or "Commission") must evaluate the cumulative impact of recent changes to broadcast television rules before it adopts the proposed rules in this and related broadcast ownership proceedings.<sup>1/</sup> The FCC's decisions in these proceedings will ultimately determine whether new entrants will have an opportunity to participate in broadcasting as it moves to the digital age, or whether regulatory and competitive entry barriers will be so high that incumbent broadcasters will dominate the broadcast marketplace. The Commission's statutory diversity obligations pursuant to Section 307(b), the impact of recent changes to broadcast licensing rules and digital television rules pursuant to the 1996 Telecommunications Act, and the Commission's broadcast public interest obligations, must be assessed in the aggregate when considering further changes to broadcast ownership and attribution rules.

The Commission must uphold its statutory mandate to eliminate market entry barriers and ensure that small businesses are not foreclosed from participating in the ongoing communications revolution.<sup>2/</sup> In this context, the Commission must consider the effects of

<sup>1/</sup> To assess the impact on consolidation and diversity of ownership in TV broadcasting, the FCC must analyze the overall impact of its pending actions in the Digital Television licensing proceeding as well as the following ownership/attribution proceedings. 1) Broadcast Television National Ownership Rules (MM Docket No. 96-222); Review of the Commission's Regulations Governing Broadcast Television (MM Docket No. 91-221); Television Satellite Stations Review of Policy and Rules (MM Docket No. 87-8), Notice of Proposed Rulemaking, FCC 96-437; released November 7, 1996 (hereinafter, "National Ownership Proceeding"); 2) Review of the Commission's Regulations Governing Broadcast Television, MM Docket No. 91-221 and Television Satellite Stations Review of Policy and Rules, MM Docket No. 87-7, Second Further Notice of Proposed Rulemaking, FCC 96-438, released November 7, 1996 ("Local Ownership Proceeding"), and Review of the Commission's Regulations Governing Attribution of Broadcast and Cable/MDS Interests, MM Docket No. 94-150, Review of the Commission's Regulations and Policies Affecting Investment in the Broadcast Industry, MM Docket No. 92-51, and Reexamination of the Commission's Cross-Interest Policy, Further Notice of Proposed Rulemaking, MM Docket No. 87-154, FCC 92-436, released November 7, 1996 (hereinafter, "Attribution Proceeding").

<sup>2/</sup> In the Matter of Section 257 Proceeding to Identify and Eliminate Market Entry Barriers for Small Businesses, GN Docket No. 96-113 Notice of Inquiry, 11 FCC Rcd 6280 (1996).

ownership concentration and predictability of access to capital for new entrants into broadcasting.<sup>3/</sup> The Commission also has a statutory mandate to ensure that the public interest, convenience, or necessity will be served by grant of broadcast licenses.<sup>4/</sup>

Section 307(b) of the Act<sup>5/</sup> mandates that the Commission distribute licenses in a fair, efficient and equitable manner. Further, a "fundamental purpose" of the Commission's regulation of broadcasting for nearly 50 years has been "to promote diversification of ownership in order to maximize diversification of program and service viewpoints."<sup>6/</sup> Diversification of control of the broadcast media is particularly desirable where, as here, a government licensing system limits access by the public to the use of television facilities.<sup>7/</sup>

BET urges the Commission to use the television broadcast market as the relevant market for examining competitive entry barriers. The market definition of multichannel video programming delivery, which is based on the definition of a cable system and uses cable franchise areas as the relevant geographic market, is not the correct market definition to examine proposed changes in the over-the-air, broadcast television market.<sup>8/</sup> Unless the Commission uses

<sup>3/</sup> See, *Id.* at 6287, citing Competitive Bidding Fifth Report and Order, 9 FCC Rcd 5532, 5535 (1994).

<sup>4/</sup> 47 U.S.C. § 307(a); 47 U.S.C. 309(a).

<sup>5/</sup> "[T]he Commission shall make such distribution of licenses, frequencies, hours of operation, and of power among the several states and communities as to provide a fair, efficient, and equitable distribution of radio service to each of the same." Section 307(b) of the Communications Act of 1934, as amended (hereinafter, "Act"), 47 U.S.C. § 307(b).

<sup>6/</sup> Amendment of Sections 3.35, 3.240, and 3.636 of Rules and Regulations Relating to Multiple Ownership of AM, FM and Television Broadcast Stations (Report and Order), 18 FCC 288, 291 (1953).

<sup>7/</sup> Policy Statement of Comparative Broadcast Hearings, 1 FCC 2d 393, 394 (1965).

<sup>8/</sup> This multi-channel video programming market analysis derives from the cable regulation set forth in the Cable Television Consumer Protection and Competition Act of 1992, Public L. No. 102-385, 106 Stat. 1460 (1992).

the broadcast market to examine the effect of any proposed changes, Section 307(b) diversity obligations will be effectively "written out" of the Communications Act.

Consolidation of TV broadcast ownership will increase significantly because of several factors: 1) changes to FCC broadcast licensing procedures, 2) changes to FCC national ownership rules, 3) deregulation of the financial interest and syndication restrictions, and 4) the Digital Television ("DTV") licensing plan. An unprecedented number of mergers and acquisitions have occurred since elimination of the financial interest and syndication rules and passage of the Telecommunications Act of 1996 (the "Telecom Act").<sup>9/</sup> Over \$10 billion in television transactions occurred in 1996, more than doubling the \$4.6 billion that occurred in 1995.<sup>10/</sup> Without careful consideration of these factors, further actions by the FCC to relax TV ownership and attribution rules will increase broadcast ownership concentration among a small group of incumbent broadcasters and create insurmountable barriers to new entrants in digital, as well as analog, TV broadcasting.

Recent changes to the broadcast licensing rules also will hasten the further concentration of broadcast ownership and curtail the opportunity for new entrants to acquire TV licenses. The Commission has lengthened the broadcast license terms of television stations from 5 years to 8 years,<sup>11/</sup> implemented a new two-step broadcast renewal process that eliminates comparative renewal hearings and essentially renews broadcast licenses automatically,<sup>12/</sup> and "frozen"

<sup>9/</sup> Pub. L. 104-104, 110 Stat. 56 (1996).

<sup>10/</sup> "Consolidation Yea or Nay," Broadcasting and Cable, p. 4, January 27, 1997.

<sup>11/</sup> Implementation of Section 203 of the Telecommunications Act of 1996 (Broadcast License Terms) Sections 73.1020 and 74.15, 12 FCC Rcd \_\_\_\_, MM Docket No. 96-60, FCC 97-17, released January 24, 1997.

<sup>12/</sup> Renewal expectancies are granted provided the licensee has met certain public interest requirements. Implementation of Sections 204(a) and 204(c) of the Telecommunications Act of 1996 (Broad-

applications for new television station allotments.<sup>13/</sup> As a result of these changes, new entrants are shut out of the broadcast TV markets, while incumbent broadcasters can continue to combine with other incumbents to increase their market presence, up to 35% of the national audience.<sup>14/</sup>

The DTV licensing process also will magnify incumbent broadcasters' market power. The FCC has proposed that each incumbent "full-service" broadcaster will be given an additional 6 MHz channel to implement DTV.<sup>15/</sup> The Commission has also adopted DTV technical standards that will allow existing broadcasters to provide multiple streams of standard definition programming.<sup>16/</sup> Further, spectrum flexibility allows DTV channels to be used for other types of wireless communication services.<sup>17/</sup> Thus, the extra DTV channel the Commission will give

cast License Renewal Procedures) 11 FCC Rcd 6363 (1996).

<sup>13/</sup> The Commission froze applications for the top 30 broadcast markets in 1987. Advanced Television Systems and Their Impact Upon Existing Television Broadcast Service, MM Dkt. No. 87-268, Order, 2 FCC Rcd 5125 (1987). The Commission froze remaining markets on September 20, 1996, and also provided that any applications filed after October 24, 1991 that had not yet been granted would not receive a 6 MHz DTV channel. Advanced Television Systems and Their Impact Upon Existing Television Broadcast Service, MM Docket 87-268, Sixth Further Notice of Proposed Rulemaking, 11 FCC Rcd 10968, 10973 (1996). The Commission has also frozen processing of all mutually exclusive application cases, creating further barriers to new entrants. See Bechtel v. F.C.C., 10 F.3d 875 (D.C. Cir. 1993), FCC Public Notice, "FCC Freezes Comparative Hearing Proceedings," 9 FCC Rcd 1055 (1994), as modified, 9 FCC Rcd 6689 (1995).

<sup>14/</sup> Order, FCC 96-91, released March 8, 1996, 61 FR 10691.

<sup>15/</sup> Memorandum Opinion and Order/Third Report and Order/Third Notice of Proposed Rulemaking, MM Docket 87-268, 7 FCC Rcd 6924, 6926 (1992). The Act requires initial DTV licenses to be allocated to incumbents for free. Broadcasters must pay spectrum fees for providing ancillary services on these DTV channels. 47 U.S.C. § 336(e). The value of the DTV spectrum, if auctioned, has been estimated between \$10 and \$70 billion. "The Great HDTV Swindle," Wired, p. 57, 60, February 1997. The Congressional Budget Office ("CBO") has scored the DTV spectrum at \$12 billion if it were auctioned. Joint Statement of David H. Moore and Perry C. Beider, Congressional Budget Office, before the Subcommittee on Telecommunications and Finance, Committee on Commerce, U.S. House of Representatives, March 21, 1996, at 13.

<sup>16/</sup> Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service, Fourth Report and Order, 11 FCC Rcd \_\_\_\_, MM Docket 87-268, released December 27, 1996, at 4.

<sup>17/</sup> Id.

away for free to incumbent "full power" broadcasters doubles the amount of spectrum allocated to incumbent TV broadcasters and increases their broadcast market power exponentially.<sup>18/</sup>

Against the backdrop of recent changes to existing rules, the Commission has proposed changes to local and national ownership rules and attribution rules that will increase concentration among incumbent broadcasters. Specifically, in three related proceedings, the Commission proposed 1) modifications in the calculation of national audience reach,<sup>19/</sup> 2) use of a Grade A contour instead of a Grade B contour for calculating permitted local ownership structures,<sup>20/</sup> 3) changes to the attribution rules that will decrease predictability and flexibility,<sup>21/</sup> and 4) changes to the treatment of TV Satellite stations, LMAs, and JSAs for the purposes of the national and local ownership caps.<sup>22/</sup>

BET urges the Commission to prevent further concentration of broadcast ownership and avoid creating potential market entry barriers to new entrants as it considers changes to these rules. In considering market entry and public interest factors, the Commission should take special note of minority and women-owned businesses and small businesses. Minority-owned businesses only hold three percent (3%) of all television broadcast licenses.<sup>23/</sup> Empirical studies

<sup>18/</sup> "The acquisition by broadcasters of an additional license (apparently at no charge), then, is more than a property rights grab without parallel in the United States since the days of our previous robber barons, the railroads. It is also an extraordinary denial of our professed commitments to increase competition, to lower entry barriers, and to expand opportunities for historically excluded persons in the broadcasting industry." Krattenmaker, Thomas G., "The Telecommunications Act of 1996," Federal Communications Bar Journal, November 1996. The Telecommunications Act of 1996 also "exacerbates a fundamental flaw in our regulatory policy toward broadcasting: the use of spectrum allocation to confer market power on a closed class of privileged broadcasters." Id. at 41.

<sup>19/</sup> National Ownership Proceeding, supra n. 1 at 1-2.

<sup>20/</sup> Local Ownership Proceeding, supra n. 1 at 7.

<sup>21/</sup> Attribution Proceeding, supra n. 1 at 5.

<sup>22/</sup> National Ownership Proceeding, supra n. 1 at 9-10, Attribution Proceeding, supra n. 1 at 26, 32.

<sup>23/</sup> Minority Commercial Broadcast Ownership in the United States. The Minority Telecommunica-

have demonstrated a strong correlation between ownership by minority businesses and diversity of programming.<sup>24/</sup> Congress has also eliminated tax certificates to promote minority and women ownership in television.<sup>25/</sup> By providing incentives for new entrants to participate in TV broadcasting, the Commission will promote its 307(b) diversity public interest obligation by increasing the pool of potential participants among minorities, women, and small businesses. BET encourages the FCC to adopt incentives for new entrant participation in broadcasting, which would satisfy the Commission's statutory obligation to fairly and equitably distribute licenses, eliminate market entry barriers, and serve the public interest. BET specifically addresses the issues raised in the "local ownership" proceeding below.<sup>26/</sup>

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tions Development Program, National Telecommunications and Information Administration, United States Department of Commerce, April, 1996.

<sup>24/</sup> Congressional Research Service, *Minority Broadcast Station Ownership and Broadcast Programming: Is there a nexus?* (June 29, 1986 at 13, 15.).

<sup>25/</sup> Self-Employed Health Insurance Act of 1995, Pub. L. No. 104-7, §2, 109 Stat. 93 (1995).

<sup>26/</sup> BET is filing comments simultaneously in the Commission's three related broadcast attribution and ownership proceedings: 1) Broadcast Television National Ownership Rules (MM Docket No. 96-222); Review of the Commission's Regulations Governing Broadcast Television (MM Docket No. 91-221); Television Satellite Stations Review of Policy and Rules (MM Docket No. 87-8), Notice of Proposed Rulemaking, FCC 96-437; released November 7, 1996; 2) Review of the Commission's Regulations Governing Broadcast Television, MM Docket No. 91-221 and Television Satellite Stations Review of Policy and Rules, MM Docket No. 87-7, Second Further Notice of Proposed Rulemaking, FCC 96-438, released November 7, 1996, and Review of the Commission's Regulations Governing Attribution of Broadcast and Cable/MDS Interests, MM Docket No. 94-150, Review of the Commission's Regulations and Policies Affecting Investment in the Broadcast Industry, MM Docket No. 92-51, and Reexamination of the Commission's Cross-Interest Policy, Further Notice of Proposed Rulemaking, MM Docket No. 87-154, FCC 92-436, released November 7, 1996.



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To: The Commission

**REPLY COMMENTS OF BET HOLDINGS INC.**

BET Holdings, Inc. hereby submits its comments in the above captioned proceeding related to local ownership and television satellite stations. BET is a cable television entertainment business that reaches over 45 million cable households through its cable programming services, BET Cable Network, BET on Jazz, and Action Pay-Per-View. BET also produces feature length films through its ventures with BET Film Productions, BET Pictures, and United Image Entertainment. BET has also partnered with Microsoft to develop on-line programming and interactive software products for African-American consumers.

**I. The Commission Should Not Adopt Rules Increasing Consolidation In The Television Market That Would Hinder Competition and Diversity.**

As fully set forth in its comments in this proceeding,<sup>1</sup> BET believes that the changes the Commission proposes in its broadcast ownership proceedings<sup>2</sup> will increase the concentration of

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<sup>1</sup> Comments of BET Holdings, Inc. (hereinafter "Local Ownership Comments"), MM Docket No. 91-221.

<sup>2</sup> See 1) Broadcast Television National Ownership Rules (MM Docket No. 96-222); Review of the Commission's Regulations Governing Broadcast Television (MM Docket No. 91-221); Television Satellite Stations Review of Policy and Rules (MM Docket No. 87-8), Notice of Proposed Rulemaking, FCC 96-437; released November 7, 1996 (hereinafter, "National Ownership Proceeding"); 2) Review of the Commission's

broadcast outlets and create barriers to entry for new entrants.<sup>3</sup> As stated by Post-Newsweek, Inc., "the trend towards consolidation of broadcast television interests both locally and nationally is endangering our system of diverse television broadcasting that is the envy of the rest of the world."<sup>4</sup> Similarly, BET supports the comments of the Media Access Project, et. al. ("MAP") that "[d]iversity in the marketplace of ideas is a function of the number of separately controlled sources of information."<sup>5</sup> Simply increasing the number of channels will not increase diversity, if a limited number of entities control these new channels. The Commission's proposed changes to the rules in the local ownership proceeding would have just such an effect, enabling a small number of entities to control new channels and services. BET disagrees with comments claiming that a single entity controlling multiple broadcast outlets will increase diversity in programming more than multiple entities each controlling a single outlet.<sup>6</sup> The Commission should proceed cautiously, evaluate the current state of competition and diversity, and assess the impact of any digital television channel (DTV) give-away before changing the local ownership rules.<sup>7</sup> In

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Regulations Governing Broadcast Television, MM Docket No. 91-221 and Television Satellite Stations Review of Policy and Rules, MM Docket No. 87-7, Second Further Notice of Proposed Rulemaking, FCC 96-438, released November 7, 1996 ("Local Ownership Proceeding"), and Review of the Commission's Regulations Governing Attribution of Broadcast and Cable/MDS Interests, MM Docket No. 94-150, Review of the Commission's Regulations and Policies Affecting Investment in the Broadcast Industry, MM Docket No. 92-51, and Reexamination of the Commission's Cross-Interest Policy, Further Notice of Proposed Rulemaking, MM Docket No. 87-154, FCC 92-436, released November 7, 1996 (hereinafter, "Attribution Proceeding").

<sup>3</sup> See Local Ownership Comments at iv to viii and 1-2.

<sup>4</sup> See Comments of Post-Newsweek, Inc. at 2.

<sup>5</sup> See Local and National Ownership Comments of Media Access Project, et. al. (hereinafter "Comments of MAP"), MM Docket No. 91-221, at ii.

<sup>6</sup> See, e.g., Comments of the National Broadcasting Company, Inc. at ii-iii.

<sup>7</sup> See *Id.*; Comments of Post-Newsweek, Inc. at 2 ("... we believe that the public interest mandates that the Commission deregulate judiciously with the public in mind and not merely for the sake of deregulating itself. Revisions of existing ownership rules should be made if and when those changes benefit the public interest, not when it benefits the expansionist ambitions of particular entities."); *c.f.* Comments of American Women in Radio and Television ("AWRT") at 1 (urging the Commission to proceed cautiously and fully evaluate the impact of the proposed local ownership rule changes on women-owned businesses).

addition to the comments below, BET provides further analysis in Attachment A of the potential anticompetitive consequences of proposed rule changes in these dockets.

**A. The Commission Should Not Adopt Any Rules Based On A Grade "A" Contour Overlap.**

BET maintains that the Commission should not change the current duopoly rule and should retain the current Grade-B contour overlap analysis.<sup>8</sup> BET supports Post-Newsweek's view that relaxing the duopoly rule will increase consolidation in the broadcast industry and curtail diversity and competition at the expense of the public.<sup>9</sup>

BET agrees with MAP that given the lack of information regarding media ownership concentration and barriers to entry for minorities and women since the passage of the 1996 Telecommunications Act (the "Act"), the Commission should "conduct a qualitative assessment of the present state of viewpoint diversity before taking any action on proposals to relax the duopoly rule" and should suspend its interim duopoly waiver policy.<sup>10</sup> Further, the Commission must carefully evaluate how the introduction of DTV will impact the local ownership rules' twin goals of preserving diversity and fostering competition. As MAP argues, the advent of digital television will augment the concentration of media voices because current licensees may be able to provide up to four or five additional channels for every one they now operate.<sup>11</sup> With the broadcasters poised to operate additional DTV channels and retain their analog channels for a period of up to fifteen years, the Commission must assess the impact of DTV upon local markets before these rules go into effect. In the absence of a comprehensive evaluation of the impact of

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<sup>8</sup> See Local Ownership Comments of BET Holdings, Inc. (hereinafter "Local Ownership Comments"), MM Docket No. 91-221, at 2-3, 11.

<sup>9</sup> See Comments of Post-Newsweek at 2.

<sup>10</sup> See Comments of MAP, at 5.

<sup>11</sup> See Comments of MAP at 5.

DTV upon the duopoly rule, the Commission should not modify the Grade-B contour overlap approach because this would further increase the concentration of media ownership and limit diversity.<sup>12</sup>

Several commenters supported the Commission's proposal to permit ownership of stations in different DMAs, but opposed the prohibition on owning stations whose Grade A contours overlap.<sup>13</sup> It is clear that there may be situations in which stations are in different DMAs, yet are close enough that their Grade A contours overlap. The Commission should retain the Grade A and Grade B overlap prohibition. Even where two stations may be located in different DMAs, their broadcast signals may still reach portions of the same viewing audience,<sup>14</sup> and therefore serve parts of the same local viewing market. In such situations, common ownership of the stations in different DMAs would adversely affect competition and diversity in those local viewing markets.<sup>15</sup>

**B. The Commission Should Not Change The Current Radio-Television Cross-Ownership Rules.**

Eliminating the cross-ownership rule or relaxing the cross-ownership rule waiver policy would decrease the number of independent voices and reduce diversity in local markets.<sup>16</sup> BET concurs with Black Citizens for a Fair Media, et al. that relaxing the cross-ownership waiver

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<sup>12</sup> Id. at 11.

<sup>13</sup> See, e.g., Comments of NAB at 4; Comments of CBS at vi; Comments of Association of Local Television Stations at 18-20.

<sup>14</sup> Because DMAs are divided along county lines for convenience and uniformity, they do not delineate audience viewership with exact precision. Thus, individual stations may reach audiences in more than one DMA within their Grade A and Grade B contour coverage areas.

<sup>15</sup> For a detailed discussion of local market definition and market power see Attachment A.

<sup>16</sup> See Comments of Black Citizens for a Fair Media, et al. at 1-2.

policy would prevent minority and women-owned entities from entering local broadcast markets.<sup>17</sup> Under no circumstances should the Commission reduce the waiver criterion for the minimum number of independent voices below 30.<sup>18</sup>

Several commenters asserted that the cross-ownership or "one-to-a-market" rule should be eliminated or relaxed because numerous competitors to broadcast television have developed since the Commission established the rule.<sup>19</sup> These commenters argue that the rationale of maximizing diversity no longer is valid since new competitors to television and radio add diverse viewpoints, and effectively preclude any radio-television combinations from having an anticompetitive effect on a local market.<sup>20</sup>

Such comments ignore key differences between broadcast television and other forms of media. BET agrees with Post-Newsweek that services such as MMDS, DBS, and OVS are not sources of competition and diversity because a substantial portion of the public do not have access to these services, or cannot afford them; further they do not carry local, news or public interest programming.<sup>21</sup> Similarly, on-line services are not widely accessible and persons with access often do not use these services on a regular basis.<sup>22</sup> Moreover, on-line services may not increase diversity because the information they offer is often provided by established news media services that supply content to numerous outlets.<sup>23</sup>

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<sup>17</sup> Id.

<sup>18</sup> Id. at 5.

<sup>19</sup> Id. at i, 13-16.

<sup>20</sup> See Comments of CBS, Inc., MM Docket No. 91-221, at 22; id. at 14-15.

<sup>21</sup> See Comments of Post-Newsweek at 6.

<sup>22</sup> Id. at 6-7.

<sup>23</sup> Id. at 7.

Broadcasters also cannot assert that other forms of video distribution provide healthy competition and diversity in the local broadcast market, obviating the need for government regulation, when they also seek FCC protection from these very same players when their local TV advertising markets are threatened.<sup>24</sup> Thus, the Commission should not modify the one-to-a-market-rule, or the existing waiver criteria.

**C. The Commission Should Grandfather LMAs But Only For A Limited Duration.**

The Commission should attribute television LMAs on the same basis as radio LMAs.<sup>25</sup> If the Commission attributes LMAs in this manner, BET urges the FCC to grandfather LMAs that do not comply with the local ownership rules for a limited duration of 24 months from the initial order in this docket.<sup>26</sup>

Any Commission action that grandfathers LMAs for the duration of their term would harm diversity by reducing the number of independent voices in a market.<sup>27</sup> BET disagrees with Sinclair Broadcast Group, Inc.'s conclusion that LMAs promote diversity on the basis that five of its LMAs were entered into with companies controlled by a single African-American

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<sup>24</sup> See Mark Landler, "The Murdoch Jolt: A New \$1 Billion Satellite Venture Shakes Up the Television Industry," N.Y. Times, March 13, 1997, at D21 (discussing broadcasters' fear of competition from Murdoch's new satellite television service Sky); see also Paul Farhi, "The Whole World in His Hands?: Murdoch's Satellite TV Plan May Be His Shrewdest Move Yet -- if It Flies," Wash. Post., March 16, 1997 at H1, H6-H7 (quoting the CEO of the NAB as expressing concerns about whether Sky will carry all local stations).

<sup>25</sup> See Attribution Comments of BET Holdings, Inc. (hereinafter "Attribution Comments"), MM Docket No. 94-150, at 5-6. Post-Newsweek also urges the Commission to treat television LMAs in the same manner as radio LMAs. See Comments of Post-Newsweek at 1, 8.

<sup>26</sup> See Local Ownership Comments at 4.

<sup>27</sup> See Comments of Jet Broadcasting at 10 (discussing the adverse effect of LMAs on small markets).

individual.<sup>28</sup> Rather, BET concurs with Post-Newsweek that LMAs actually harm diversity interests.<sup>29</sup>

BET concurs with Post-Newsweek's position that with few exceptions LMAs should not be grandfathered and if they are grandfathered it should only be for a limited duration.<sup>30</sup> As stated by Post-Newsweek:

Each and every LMA was entered into at the risk of the contracting parties and with the knowledge that such agreements were not explicitly endorsed by the Commission. Unfortunately, LMAs have too often been used as a contrivance to skirt the television duopoly rule. LMAs should not be vehicles to avoid compliance with the Commission's multiple ownership rules or subterfuge for efforts to undermine the Commission's long-standing cross-interest policy. Blanket grandfathering of LMAs now would only encourage further actions of evasion when parties encounter other Commission rules they dislike. In effect, under the Commission's proposal, stations that acted responsibly as "good citizens" when LMA activity was in its zenith would be penalized for not raiding the henhouse when the Commission's back was turned.<sup>31</sup>

LMAs bypass the duopoly and one-to-a-market rules and permit increased concentration of broadcast ownership. Thus, the Commission should only grandfather LMAs for a sufficient period to permit the entities who relied on these relationships to form alternative arrangements to comply with the local ownership rules.

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<sup>28</sup> See Comments of Sinclair Broadcast Group, Inc. at 8.

<sup>29</sup> See Comments of Post-Newsweek at 6 (The premier tenet of broadcasting in the United States is that licensees serve the public interest. Licensees can meet that obligation only if they retain control over their programming, advertising and management of their stations. . . . Diversity of voices in local markets decline when stations that otherwise would be independently managed are controlled by other stations that likely exist in the very same market. The public interest suffers when there are fewer voices in local markets. Thus, LMAs and similar agreements run counter to the very premise upon which our system of broadcasting is based.) (footnotes omitted).

<sup>30</sup> *Id.* at 7.

<sup>31</sup> *Id.* at 7-8.

## **II. The Commission Should Not Grant Waivers From Its Local Ownership Rules Because Waivers Will Hinder The Ability Of New Entrants To Enter Television and DTV Markets.**

In its comments, BET argued that the Commission should not change the duopoly rule from a Grade B contour overlap to a Grade A contour overlap standard.<sup>32</sup> Should the Commission modify the duopoly rule by ultimately adopting the proposed DMA/Grade A standard, it should not grant any waivers from this approach. If the Commission decides to grant waivers, it should be only on a case-by-case basis and subject to very limited circumstances. Granting waivers in any other manner would eliminate opportunities for new entrants to acquire ownership of existing stations, thus decreasing competition and diversity.<sup>33</sup>

There are two limited circumstances where the FCC may consider waivers on a case-by-case basis. In all cases, the waivers should only be considered if there are no new entrants who wish to apply for the licenses. First, the Commission should consider granting "failed stations" waivers only to minority and female-owned businesses on the basis of diversity criteria. Second, the Commission should consider granting waivers for local stations that will primarily air minority or ethnic programming. In both situations, such stations serve the public interest by providing diverse programming.

BET supports MAP's arguments that there should be no UHF exception to the duopoly rule.<sup>34</sup> BET shares Post-Newsweek Stations, Inc.'s concerns that "[r]elaxing the duopoly rule to

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<sup>32</sup> Local Ownership Comments, at 2-3.

<sup>33</sup> See Local Ownership Comments at 5-6; Comments of Viacom, Inc. at 7 ("The Commission must be diligent so as not [to] permit such waivers where the purchasing or brokering station is another network or a network owner and operator whose true interests may lie in obtaining control of a second station in a market for the purpose of depriving new networks of affiliates and thereby inhibiting network competition.").

<sup>34</sup> See Comments of MAP at 12, 18. In this regard, BET supports the MAP position also. MAP proposes that the Commission grant a waiver based upon diversity concerns if the "failed" station has not operated for a year and there are no new entrants who wish to apply for the license.



permit joint ownership of UHF/UHF or UHF/VHF combinations would place more channels in fewer hands, endangering the Commission's long-standing goals of diversity, competition and service to local communities."<sup>35</sup> Furthermore, there no longer exists any justification to favor UHF station ownership. There is little difference between UHF and VHF market strength because the majority of households today either are connected to cable or will most likely watch DTV channels on UHF frequencies in the future.<sup>36</sup>

The Commission should not grant "blanket" "failed station" waivers. Blanket "failed station" waivers based on a DMA/Grade A standard would substantially preclude new entrants from entering the television and DTV markets.<sup>37</sup> As MAP correctly points out:

Given the already difficult market entry barriers that grow more formidable as consolidation in the industry increases, the FCC should be making its best effort to increase, and not decrease, opportunities for new entrants, who tend to be disproportionately female and minorities. With "digital" spectrum expected to be given only to incumbent broadcasters, and the 1996 Telecommunications Act's "two-step" renewal procedures effectively ending any opportunity for filing competing applications, vacant and new channels may be the last opportunity non-incumbents have to enter broadcasting.<sup>38</sup>

If the Commission adopts the proposed DMA/Grade A approach, it should only grant case-by-case waivers to promote diverse ownership among minorities and women.

Permitting exemptions for minority-owned station combinations from the local ownership rules will not have an adverse impact on diversity<sup>39</sup> and will likely increase the diversity of programming.

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<sup>35</sup> See Comments of Post-Newsweek Stations, Inc. at 4.

<sup>36</sup> Id.

<sup>37</sup> See Comments of MAP, at 17-18.

<sup>38</sup> Id. at 19-20.

<sup>39</sup> Id. at 6-7.

The Commission should not grant waivers based upon market size or concentration. BET agrees with MAP that waivers for market size or low concentration would not increase competition or programming.<sup>40</sup> Such waivers might eliminate competition in profitable or niche markets; any cost savings from economies of scale in ownership would not necessarily result in an increase in public interest programming.<sup>41</sup>

### CONCLUSION

The Commission should retain the current duopoly rule and not deviate from the current Grade B contour overlap analysis. The proposed Grade A / DMA approach will lead to increased consolidation in the broadcast industry and will decrease diversity of programming and competition among fewer owners. Before instituting substantial changes that will affect the entire broadcast market, the Commission should evaluate the impact of proposed changes in the local ownership rules and in particular how DTV will influence the rules.

The Commission should not eliminate the cross-ownership rule or relax the cross-ownership rule waiver policy because such actions would reduce the number of distinct voices and thereby harm diversity in local markets. If it decides to attribute LMAs, the Commission should only grandfather them for a limited period. Grandfathering LMAs for the length of their term would permit entities to bypass the local ownership rules by controlling the advertising and programming of stations they do not own.

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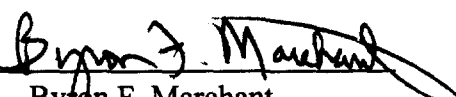
<sup>40</sup> See Comments of MAP at 21.

<sup>41</sup> *Id.* BET concurs with MAP's argument that any market size concentration waivers should not include considerations of non-broadcast television outlets, such as DBS, MMDS, OVS, on-line services, or broadcast radio. *Id.* at 23-24.

In general, the Commission should not grant waivers from its local ownership rules because they will prevent new entrants from entering the television and DTV markets. Should the Commission decide to grant waivers, it should do so only: (1) on a case-by-case basis, (2) if there are no new entrants who wish to apply for the licenses, and (3) for minority and female-owned businesses seeking "failed stations" or for stations that will air primarily minority or ethnic programming.

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# **ATTACHMENT A**

**Effects Of The FCC's Proposed Relaxation Of The Local Ownership Rules  
On The Washington D.C. / Baltimore / Philadelphia Local Broadcast Markets**

## **Introduction**

In its Second Further Notice of Proposed Rule Making, the Commission proposes changes to the duopoly rule and the cross-ownership rule which, if implemented, will have a devastating effect on local broadcast markets. The Commission proposes to move from a standard in which an entity may not own two stations whose Grade B contours overlap to a combined Designated Market Area ("DMA") / Grade A contour approach in which an entity may not own two stations within a single DMA or two stations whose Grade A contours overlap.<sup>1</sup> Similarly, the Commission proposes to extend the radio-television cross-ownership waiver policy -- permitting an entity to acquire a radio and television station in the same market -- from the top 25 markets to the top 50 markets, if at least 30 independently-owned broadcast voices remain after the acquisition.<sup>2</sup> The Commission also proposes to grandfather LMAs entered into before the adoption of the Second Further Notice for the remainder of their original term if the Commission decides to make LMAs attributable.<sup>3</sup>

DMAs provide an approximation of a television station's geographic market.<sup>4</sup> Grade A contours have a radius of approximately 30-45 miles, while Grade B contours have a radius of approximately 50-70 miles.<sup>5</sup> There are multiple instances where two stations are located in different DMAs and yet their Grade A contours overlap. For example, stations' Grade A

<sup>1</sup> See Review of the Commission's Regulations Governing Television Broadcasting, MM Docket No. 91-221 and Television Satellite Stations Review of Policy and Rules, MM Docket No. 87-7 (hereinafter "Second Further Notice") at ¶ 13 (released Nov. 7, 1996).

<sup>2</sup> Id. at ¶ 66.

<sup>3</sup> Id. at ¶ 88, 89.

<sup>4</sup> Second Further Notice at ¶ 14.

<sup>5</sup> Id. at ¶ 10.

contours in: Boston, Massachusetts overlap with those in Providence, Rhode Island; Detroit, Michigan overlap with those in Toledo, Ohio; and Washington, D.C. overlap with those in Baltimore, Maryland.<sup>6</sup> Similarly, there are DMAs where the Grade B contours of one or more of the stations in their markets overlap with the Grade B contours of one or more stations in an adjacent DMA.

The following market analyses indicate how changes to the local ownership rules could adversely affect competition and diversity in local markets. First, an analysis of the Baltimore, MD and Philadelphia, PA DMAs indicates that the Commission should retain the current prohibition on Grade B contour overlaps. Second, an analysis of the Washington, D.C. and Baltimore, MD DMAs, demonstrates that a standard that only prohibits entities from owning two stations in a single DMA would, by itself, be insufficient to protect competition and diversity in local markets. Rather, the Commission should retain its Grade B overlap standard and not allow combinations based on an intermarket DMS analysis. Finally, waivers of the cross-ownership rule and grandfathering existing LMAs would further increase the concentration of ownership impact in both analyses.

### **Market Definition**

The metropolitan Washington, D.C. Designated Market Area ("DMA")<sup>7</sup> ranks seventh nationally in terms of number of television households reached.<sup>8</sup> It covers parts of four states:

<sup>6</sup> Comments of CBS, Inc., MM Docket No. 91-221; 87-7 at 43, n. 77 (Feb. 7, 1997)

<sup>7</sup> A Designated Market Area ("DMA") is defined as "an NSI (Nielson) geographic area term; [in which] counties are exclusively assigned to the market with the highest television viewing levels." SRDS, TV & Cable Source, Vol. 78 No. 2, A28 (Second Quarter 1996) (hereinafter "TV & Cable Source"). Thus, DMAs are geographic units consisting of counties divided up based upon audience viewership.

<sup>8</sup> Id. at A-15.

Maryland, Virginia, Pennsylvania, and West Virginia, as well as the District of Columbia. The Washington, D.C. DMA encompasses approximately: 13 television stations, 34 cable systems, and 47 metropolitan radio stations.<sup>9</sup> The Baltimore DMA ranks twenty-third nationally for number of television households reached.<sup>10</sup> It covers ten counties and Baltimore City all located within Maryland. The Baltimore DMA encompasses approximately: 7 television stations, 10 cable systems, and 31 metropolitan radio stations.<sup>11</sup> The Philadelphia DMA ranks fourth nationally in terms of number of television households reached. It covers parts of three states: Pennsylvania, New Jersey, and Delaware, including 17 counties and the city of Philadelphia. The Philadelphia DMA includes approximately: 15 television stations, 41 cable systems, and 66 metropolitan radio stations.<sup>12</sup>

**Baltimore, MD / Philadelphia, PA Markets**

Philadelphia is located approximately 90 miles northeast of Baltimore. Given that the radius of Grade A contours is 30-45 miles and Grade B contours is 50-70 miles, it is unlikely that stations in the two DMAs could have overlapping Grade A contours, but likely that at least several stations will have overlapping Grade B contours. In fact, almost all stations located in the Baltimore DMA have Grade B contours that overlap with the Grade B contours of stations in the Philadelphia DMA, yet their Grade A contours do not overlap. The same holds true for stations located in the Philadelphia DMA, which have Grade B contours that overlap with stations in the Baltimore DMA.

<sup>9</sup> Id. at 1140-50.

<sup>10</sup> Id. at A-15.

<sup>11</sup> Id. at 76-79.

<sup>12</sup> Id. at 837-51.

For example, WBAL (CBS, ch.11), WJZ-TV (ABC, ch. 13), and WMAR-TV (NBC, ch. 2) are located within the Baltimore DMA and their Grade A contours extend to the northeast until just before the town of Elkton, MD, while their Grade B contours extend to Newark, NJ.<sup>13</sup> KYW-TV (NBC, ch. 3), WCAU (CBS, ch. 10), WGBS-TV (Ind., ch. 57), WPHL-TV (Ind., ch. 17), WPVI-TV (ABC, ch. 6), and WTXF-TV (Fox, ch. 29) are located within the Philadelphia DMA and their Grade A contours extend southwest to just after Newark, NJ, while their Grade B contours extend past Elkton, MD.<sup>14</sup> Therefore, none of the stations' Grade A contours overlap, yet all of their Grade B contours overlap between Elkton, MD and Newark, NJ.<sup>15</sup>

Several stations in the Baltimore DMA and Philadelphia DMA share portions of the same audience and have net weekly circulations to audiences in the same counties including: York, Lancaster, and Perry in Pennsylvania; Kent and Sussex in Delaware; and Cecil, Caroline, Queen Annes in Maryland.<sup>16</sup>

#### **Washington, D.C. / Baltimore, MD Markets**

It is undisputed that stations in the Baltimore and Washington, D.C. DMAs have overlapping Grade A contours.<sup>17</sup> The Grade A and Grade B contours of all Washington, D.C. stations including WDCA-TV (Ind., ch. 20), WFTY (Ind., ch 50), WJLA-TV (ABC, ch. 7), WRC-TV (NBC, ch. 4), WTTG (Fox, ch. 5), and WUSA (CBS, ch. 9) overlap with the Grade A

<sup>13</sup> Id. at A-555 to A-561.

<sup>14</sup> Id. at A-975 to A-980.

<sup>15</sup> See attached maps for information on Grade A and Grade B contours for stations in the two markets.

<sup>16</sup> See Comark Communications Inc., 60 Television & Cable Factbook at A-555 to A-561 and A-975 to A-980 (1992) (hereinafter "Factbook").

<sup>17</sup> See Comments of the Association of Local Television Stations, MM Docket No. 91-221; 87-81 at 20 (Feb. 7, 1997); Comments of CBS, Inc., MM Docket No. 91-221; 87-7 at 42 (Feb. 7, 1997) (discussing how CBS affiliate WUSA's (Washington, D.C.) Grade A contour overlaps with CBS affiliate WJZ-TV's (Baltimore) Grade A contour).



and Grade B contours for Baltimore, Maryland stations including WBAL-TV (CBS, ch. 11), WBFF (Fox, ch. 45), WHSW (HSN, ch. 24), WJZ-TV (ABC, ch. 13), WMAR-TV (NBC, ch. 2), and WNUV-TV (Ind., ch. 54) and vice-versa.<sup>18</sup> All but two of the stations in the Washington, D.C. DMA (i.e. WFTY and WUSA) had net weekly circulations of between five and twenty-four percent in Baltimore. Similarly, all but one of the stations in the Baltimore DMA (i.e. WHSW, carrying the home shopping network) had net weekly circulations of between five and twenty-four percent in Washington, D.C.<sup>19</sup>

### **Market Analyses**

The following analyses demonstrate the effects upon local markets of relaxing the local ownership rules. The first analysis focuses on the Baltimore, MD and Philadelphia, PA DMAs to show the effects of the Commission's current DMA / Grade A proposal, which would permit a Grade B contour overlap by stations in different DMAs. The second analysis uses the Washington, D.C. and Baltimore, MD DMAs to show a similar effect by stations in different DMAs that have overlapping Grade A contours.

#### **1. Grade B Contour Overlap By Stations In Different DMAs: The Case of Baltimore, MD and Philadelphia, PA.**

Under the Commission's proposed changes to the duopoly rule, an entity could own a television station in each of the Baltimore, MD and Philadelphia, PA DMAs because the stations would be in different DMAs and their Grade A contours would not overlap. For example, a single entity could own both WBFF-TV, Fox channel 45 in Baltimore, and WTFX-TV, Fox channel 29 in Philadelphia. In a departure from the current rules, stations' Grade B contours

<sup>18</sup> See Factbook at A-214 to A-222 and A-555 to A-561.

<sup>19</sup> Id.